

**COURT OF APPEALS
DECISION
DATED AND FILED**

March 13, 2014

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2013AP1112

Cir. Ct. No. 2013CV75

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

QUINCY NERI,

PLAINTIFF-APPELLANT,

RODNEY RIGSBY,

PLAINTIFF,

v.

**PINCKNEY HOLDINGS, LLC, LINDA HUGHES, JOHN HUGHES, JOMA
INDUSTRIES, INC., BELL LABORATORIES, INC., DUNLOP
ASSOCIATES, INC. AND MALCOLM STACK FOUNDATION,**

DEFENDANTS-RESPONDENTS.

APPEAL from a judgment and an order of the circuit court for Dane County: JOHN W. MARKSON, Judge. *Affirmed and cause remanded with directions.*

Before Lundsten, Sherman and Kloppenburg, JJ.

¶1 PER CURIAM. Quincy Neri appeals the circuit court’s judgment and order dismissing Neri’s complaint and imposing sanctions for filing a frivolous action. Neri contends that her complaint stated claims, that sanctions were inappropriate, and that the circuit court judge was biased.¹ We conclude that Neri’s complaint failed to state a claim, that sanctions were properly imposed, and that Neri’s claim of judicial bias lacks merit. Accordingly, we affirm. Additionally, we grant the motion by the respondents for sanctions for a frivolous appeal.

Background

¶2 This action stems from Quincy Neri’s claim that she created an art glass sculpture for installation in the home of Linda Hughes and identified a valuable mural in Hughes’ ceiling. Neri has claimed a copyright in the glass sculpture and that others have infringed on that copyright, and has pursued both federal and state lawsuits arising from those facts. In this case, Neri claims damages based on actions related to the remodeling of the Hughes home and photographs taken of the remodeling project.² Specifically, Neri complains that Neri identified a valuable mural in Hughes’ ceiling but was not hired to remove it or otherwise compensated for the discovery; that Neri was not hired to rebuild

¹ While Neri asserts many wrongs against her, the only coherent arguments we decipher in her brief are that the circuit court erred by dismissing Neri’s complaint for failure to state a claim, that sanctions were not appropriate, and that the circuit court was biased. Accordingly, we limit our discussion in this opinion to those three issues. See *State v. Pettit*, 171 Wis. 2d 627, 646-47, 492 N.W.2d 633 (Ct. App. 1992) (we need not address inadequately briefed issues).

² Rodney Rigsby was also a plaintiff below, but has not appealed the circuit court’s decision.

Hughes' ceiling to accommodate the glass sculpture; and that photographs of the glass sculpture were posted on the internet and used to win an interior design award. The circuit court dismissed Neri's complaint for failing to state a claim and imposed sanctions. Neri appeals.

Discussion

¶3 When we review an order dismissing a complaint for failure to state a claim, we assume the truth of the facts asserted in the complaint. *See Putnam v. Time Warner Cable of Se. Wis.*, 2002 WI 108, ¶11, 255 Wis. 2d 447, 649 N.W.2d 626. ““Unless it seems certain that no relief could be granted under any set of facts that the plaintiff could prove, dismissal of the complaint is improper.”” *Id.* (quoted source omitted). Because the facts asserted in Neri's complaint do not set forth any cognizable claim, the complaint was properly dismissed.

¶4 Neri asserts first that she has stated a claim by asserting that the respondents' attorneys are representing multiple parties with conflicts of interest. She also asserts that the attorneys violated supreme court rules related to conflicts of interest. However, Neri's claim that the respondents' attorneys have conflicts of interest among their own clients is meritless. Neri does not even attempt to argue that a conflict of interest among the respondents' attorneys' clients would give rise to a claim by Neri, but rather merely asserts that the conflict exists. As to Neri's claims that the respondents' attorneys violated the supreme court rules, it is sufficient for us to note that the preamble to the rules specifically states that the rules are not a basis to impose liability. *See SCR ch. 20, Preamble: A Lawyer's Responsibilities.*

¶5 Neri also argues that she stated a claim for fraud. Neri contends that the respondents committed fraud by failing to disclose to others that Neri had

created the glass sculpture in the Hughes home, giving others permission to photograph the sculpture, and using photographs of the sculpture in an interior design award entry. It also appears that Neri is asserting that the respondents committed fraud by failing to hire Neri to remove the mural Neri asserts she discovered in the Hughes home.

¶6 A claim of fraud requires the following elements:

(1) the defendant made a factual representation, (2) which was untrue, (3) the defendant either made the representation knowing it was untrue or made it recklessly without caring whether it was true or false, (4) the defendant made the representation with intent to defraud and to induce another to act upon it, and (5) the plaintiff believed the statement to be true and relied on it to his/her detriment.

Williamson v. Hi-Liter Graphics, LLC, 2012 WI App 37, ¶13 n.6, 340 Wis. 2d 485, 811 N.W.2d 866. Additionally, “[i]n all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with particularity.” *See* WIS. STAT. § 802.03(2) (2011-12).³ Thus, a plaintiff must plead “the ‘who, what, when, where and how’” of a fraud claim. *Friends of Kenwood v. Green*, 2000 WI App 217, ¶14, 239 Wis. 2d 78, 619 N.W.2d 271 (quoted source omitted).

¶7 Here, Neri’s complaint does not set forth any facts that would support a claim that any defendant made a false representation to Neri that induced Neri to act to her detriment. Rather, Neri’s complaint sets forth vague assertions that the defendants were dishonest in connection with the glass sculpture and the

³ All references to the Wisconsin Statutes are to the 2011-12 version unless otherwise noted.

remodeling of the Hughes home.⁴ Neri does not set forth any specific false representation to Neri, nor does she set forth any actual *reliance* by Neri on a false statement. Accordingly, Neri has not stated a claim for fraud.

¶8 Neri asserts that she has stated a claim for tortious interference with contractual relations. So far as we can tell, Neri is claiming that the respondents interfered with Neri’s contracts in the following ways: (1) excluding Neri from any publicity related to the interior design award, which would have resulted in work contracts for Neri; and (2) failing to hire Neri to remove the mural or rebuild the Hughes ceiling to accommodate Neri’s glass sculpture, when Neri believed she would be hired for each entire project.

¶9 A claim for tortious interference with a contract has five elements: “(1) the plaintiff had a contract or prospective contractual relationship with a third party; (2) the defendant interfered with the relationship; (3) the interference was intentional; (4) a causal connection exists between the interference and the damages; and (5) the defendant was not justified or privileged to interfere.” *Brew City Redevelopment Group, LLC v. Ferchill Group*, 2006 WI 128, ¶37 n.9, 297 Wis. 2d 606, 724 N.W.2d 879 (quoted source omitted). Here, Neri’s complaint does not set forth any contracts or prospective contracts with which the

⁴ Neri’s complaint is lengthy and largely incoherent. We do not attempt to set forth all of the complaint’s factual allegations in this opinion. As to Neri’s claims of fraud, Neri sets forth conclusory allegations such as the following: “All [d]efendants[] committed misrepresentation from the start of the mural discovery, to the ceiling design, to applying and winning the [interior design] award”; that the defendants entered the award by “using Neri’s art glass sculpture and ceiling design as their own”; that the defendants had “knowledge of the falsity of their statements”; and that “all [d]efendants[] kept Neri completely in the dark of their misrepresentation by applying for and winning the [interior design] award using Neri’s creations as their own.” These vague and conclusory allegations are insufficient to support a claim of fraud.

respondents could have interfered. Rather, Neri speculates that such contracts would have been created. This is insufficient to support a claim of tortious interference with a contract.

¶10 Neri also contends that she has stated a claim for tortious interference with prospective business relationships. It appears that Neri is basing this claim on the same facts she asserts for her tortious interference with contract claim. Again, Neri fails to set forth any actual prospective business with which the respondents could have interfered, but rather speculates such business would have come into existence. This is insufficient to state a claim for tortious interference with prospective business relationships. *See Anderson v. Regents of Univ. of Cal.*, 203 Wis. 2d 469, 490, 554 N.W.2d 509 (Ct. App. 1996) (setting forth elements of tortious interference claims).

¶11 As to stating a claim, Neri's final argument is that Neri has stated a claim for invasion of privacy. This argument is premised on the idea that displaying Neri's sculpture is the same as displaying Neri's name and image and, thus, the respondents violated Neri's privacy by displaying the sculpture to others. This is simply not the law on invasion of privacy. Under WIS. STAT. § 995.50(2)(b), "invasion of privacy" includes "[t]he use, for advertising purposes or for purposes of trade, *of the name, portrait or picture of any living person*, without having first obtained the written consent of the person" (emphasis added). A glass sculpture is not a living person. We conclude that Neri's complaint failed to state any claim for invasion of privacy.⁵

⁵ Neri's complaint also sets forth a separate tort claim for intentional infliction of emotional distress. Neri does not pursue that claim on appeal.

¶12 Next, Neri contends that the circuit court judge was biased based on having presided over Neri's previous cases. Neri contends that the judge should have recused himself under WIS. STAT. § 757.19(2)(g) because the judge should have determined that he was not impartial. However, the determination of a judge's ability to act impartially is for the judge to make. *See State v. American TV & Appliance of Madison, Inc.*, 151 Wis. 2d 175, 183, 443 N.W.2d 662 (1989). Here, Neri did not move the circuit court judge to disqualify himself under § 757.19, and the judge made no finding that he could not be impartial. Moreover, "the fact that a [party] has appeared before a judge on prior occasions does not in itself establish prejudice." *Sprang v. State*, 63 Wis. 2d 679, 684, 218 N.W.2d 304 (1974). In this case, there is no evidence in the record that the circuit court judge failed to act impartially.

¶13 We turn, then, to Neri's claim that sanctions were improperly imposed. Neri argues that her claims have merit and that she has a due process right to pursue her claims. In essence, Neri's argument as to sanctions is a challenge to the circuit court's determination that Neri's claims are frivolous.

¶14 We conclude that the circuit court properly exercised its discretion in determining that sanctions were appropriate under WIS. STAT. § 802.05. *See Keller v. Patterson*, 2012 WI App 78, ¶¶20-23, 343 Wis. 2d 569, 819 N.W.2d 841, *review denied*, 2013 WI 6, 345 Wis. 2d 405, 827 N.W.2d 95. We review a circuit court's determination as to how much investigation should have been done prior to filing suit for an erroneous exercise of discretion. *Donohoo v. Action Wis., Inc.*, 2008 WI 56, ¶34, 309 Wis. 2d 704, 750 N.W.2d 739. We will uphold a discretionary decision so long as the court "examined the relevant facts, applied a proper standard of law and, using a demonstrated rational process, reached a conclusion that a reasonable judge could reach." *Id.* (quoted source omitted).

¶15 The court explained that, even though Neri is proceeding pro se, she should have recognized that her claims lacked merit. The court noted that a common-sense view of the facts that were alleged—that Hughes had her home remodeled, which included use of Neri’s art glass sculpture, and then allowed her home to be photographed—reveals that those facts do not support any allegation of wrongful conduct. The court also noted that all of Neri’s claims related to Hughes, and that there was no reasonable explanation for including the multiple additional respondents. Because even a cursory inquiry into the facts and law would have revealed that Neri’s claims are baseless, sanctions were appropriate under WIS. STAT. § 802.05(3).

¶16 We also are satisfied that the circuit court properly exercised its discretion when it determined that the appropriate type of sanction to impose was payment of the respondents’ attorneys’ fees, a bar on further filings against the same respondents based on the same facts until the monetary sanction is satisfied, and a bar on filing new actions in the circuit court without payment of the filing fee without a judge’s approval. Under WIS. STAT. § 802.05(3)(b), a circuit court may issue both monetary and non-monetary sanctions, so long as the sanctions are “limited to what is sufficient to deter repetition” of the conduct for which the sanctions are being issued. Here, the circuit court explained that the sanctions it imposed were necessary based on Neri’s filing multiple frivolous lawsuits and Neri’s pattern of filing cases, obtaining a fee waiver, and then adding Rodney Rigsby as a plaintiff so that Rigsby was not required to file an affidavit of indigency. The limitation was narrowly tailored to strike the necessary balance between Neri’s right of access to the courts and the respondents’ interest in finality, as well as recognizing “the taxpayers’ right not to have frivolous litigation become an unwarranted drain on their resources and the public interest in

maintaining the integrity of the judicial system.” See *Minniecheske v. Griesbach*, 161 Wis. 2d 743, 749, 468 N.W.2d 760 (Ct. App. 1991).

¶17 Finally, we address the respondents’ motion for sanctions for a frivolous appeal. The respondents request that we find this appeal frivolous under WIS. STAT. RULE 809.25(3) and enter an order awarding the respondents their attorney fees and costs. The respondents further request that we enter an order barring Neri from suing any of the respondents until Neri satisfies all judgments and fees entered against her. We agree that that is an appropriate remedy, although we limit the bar on filings against the respondents to any actions arising out of the facts of this case.

¶18 WISCONSIN STAT. RULE 809.25(3)(a) states that, if this court finds an appeal is frivolous, the court “shall award to the successful party costs, fees, and reasonable attorney fees under this section.” In an appeal from a ruling of frivolousness, we need not determine whether the appeal itself is frivolous before we can award appellate costs and reasonable attorney fees. *Riley v. Isaacson*, 156 Wis. 2d 249, 262, 456 N.W.2d 619 (Ct. App. 1990). Rather, if we determine the claim was properly found frivolous by the circuit court, it is frivolous per se on appeal. *Id.* Because we conclude that the circuit court properly found Neri’s claims frivolous, Neri’s appeal asserting the merits of her claims is also frivolous.

¶19 We award costs and attorney fees under WIS. STAT. RULE 809.25 only when we deem an appeal to be frivolous in its entirety. See *State ex rel. Robinson v. Town of Bristol*, 2003 WI App 97, ¶54, 264 Wis. 2d 318, 667 N.W.2d 14. Beyond Neri’s arguments as to the merits of her claims, the only other issue coherently argued by Neri on appeal is whether the circuit court judge was required to recuse himself. As discussed above, this argument is completely

lacking in merit, particularly in light of the fact that Neri never asked the circuit court judge to recuse himself in the first place. We conclude that Neri’s entire appeal is frivolous.

¶20 Under WIS. STAT. RULE 809.25(3)(a), when an appeal is found to be frivolous, we “shall award to the successful party costs, fees and reasonable attorney fees” incurred in litigating the appeal. Accordingly, we remand to the circuit court for a determination of the respondents’ costs and reasonable attorney fees.

¶21 “If we determine that an appeal is frivolous, we also have the ability to bar the party in question from commencing further proceedings in this court and in the trial court until the costs, fees, and attorney fees that we award are paid in full.” *Schapiro v. Pokos*, 2011 WI App 97, ¶21, 334 Wis. 2d 694, 802 N.W.2d 204. In light of Neri’s insistence in pursuing the frivolous claims in this case, and in recognition that Neri is currently pursuing two similar appeals—appeal numbers 2013AP713 and 2013AP1818—we determine that sanctions are appropriate here. As we explain above, we believe this strikes the necessary balance among the various interests at stake. See *Minniecheske*, 161 Wis. 2d at 749.

Conclusion

¶22 We affirm the judgment and order of the circuit court and conclude that the respondents are entitled to their costs and reasonable attorney fees on appeal under WIS. STAT. RULE 809.25(3). We remand to the circuit court to determine the proper amount. Further, we bar Neri from commencing proceedings in this court and the circuit court arising from, relating to, or involving the respondents and the facts connected to this case until Neri satisfies the judgments entered against her in this case. The clerk of this court is instructed to return,

unfiled, any document submitted by Neri relating to any matter arising from, relating to, or involving the respondents and the facts of this case. On remand, the circuit court shall enter whatever order is necessary to give direction to the clerk of the circuit court relating to this opinion's prohibition on future filings by Neri. The clerk of this court will resume accepting Neri's documents for filing if the documents are accompanied by an order of the circuit court indicating that Neri has paid all of the costs, fees, and reasonable attorney fees awarded in connection with this case.

By the Court.—Judgment and order affirmed and cause remanded with directions.

This opinion will not be published. *See* WIS. STAT. RULE 809.23(1)(b)5.

